



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #88-6

SUBJECT: Timber Deeds
(Documentary Tax)

EFFECTIVE DATE: July 1, 1988

REFERENCE: S.C. Code Ann. Section 12-31-360 (1976)
S.C. Code Ann. Section 12-21-380 (Supp. 1987)
S.C. Code Ann. Section 36-2-107 (1976)

AUTHORITY: S.C. Code Ann. Section 12-3-170 (1976)
SC Revenue Procedure #87-3

SCOPE: A Revenue Ruling is the Commission's official interpretation of how tax law is to be applied to a specific set of facts. A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Question:

Are timber deeds, which convey standing timber for a fee per board foot or cord cut, subject to the documentary tax pursuant to S.C. Code Section 12-21-380?

Facts:

Deeds which convey standing timber based on acreage are being taxed as deeds pursuant to Section 12-21-380. Deeds which convey standing timber based on a fee per board foot or cord cut are not presently subject to the state's documentary tax. Such instruments have been considered to be written obligations to pay money under now repealed Section 12-21-360.

Code Section 12-21-380 reads:

A deed, instrument, or writing whereby any lands, tenements, or other realty sold is granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or any other person by his direction when the consideration or value of the interest or property conveyed exclusive of the value of any lien or encumbrance remaining thereon at the time of sale exceeds one hundred dollars and does not exceed five hundred dollars must

be taxed one dollar and ten cents and for each additional five hundred dollars, or fractional part thereof, one dollar and ten cents. Ten cents of the tax on those sales over one hundred dollars but not exceeding five hundred dollars and ten cents of the tax on each additional increment of \$500 must be paid to the Heritage Land Trust Fund. Any deed, instrument, or writing whereby any lands, tenements, or other realty is granted, assigned, transferred, or otherwise conveyed to, or vested in, the state of South Carolina, or any of its political subdivisions and departments, for highway or other public purposes is exempted from the documentary tax requirements of this section, and any clerk of court or register of mesne conveyances may record these deeds or other instruments without revenue stamps affixed and without penalty.

Code Section 12-21-360, repealed July 1, 1987, previously taxed notes, written obligations to pay money, mortgages, etc. at a lower rate than deeds.

Discussion:

The case of *Milwaukee Land Co. v. Poe*, 31 F.2d 733 (1929), concerned a now repealed federal documentary tax statute on deeds. That statute was almost identical to South Carolina Code Section 12-21-380. In that case, the Ninth Circuit Court of Appeals cited an Internal Revenue regulation which provided that "what constitutes lands, tenements or realty `is determinable by the law of the state in which the property is situated. Standing timber is ordinarily held to be real estate, and where so held the deed transferring it is subject to the tax'."

In *Alexander v. Herndon*, 84 SC 181, 65 SE 1048 (1909), the South Carolina Supreme Court held that "[g]rowing timber is a part of the land." In *Hamilton Ridge Lumber Corporation v. Southern Cotton Oil Co.*, 271 F. 934 (1921) it was held that:

A contract by which in terms defendant sold to complainant all its timber of certain kinds situate in South Carolina, to be cut and delivered by defendant at complainant's mill, the purchase price to be measured by the logs, which were to be measured and paid for as delivered, held one for the sale of standing timber, which, under the laws of South Carolina, carries a interest in real estate, and a breach of which by defendant may be enjoined. (Emphasis added.)

Opinion of the Attorney General, P-OAG-214, dated May 17, 1979 cited the above quote in holding that a sale of standing timber carries an interest in realty. Recently, the South Carolina Court of Appeals cited *Alexander v. Herndon*, supra, in the case of *Graham v. Prince*, 293 S.C. 77, 358 S.E.2d 714 (1987). The court noted that "growing timber is an interest in land subject to the Statute of Frauds."

South Carolina Code Section 36-2-107(1) of the Uniform Commercial Code provides that the sale of timber, minerals and the like when severed by the seller from the realty is a contract for the sale of goods.

With respect to the same code section, the official comment reads, in part:

Subsection (1). Notice that the subsection applies only if the timber, minerals or structures `are to be severed by the seller.' If the buyer is to sever such transactions are considered contracts affecting land and all problems of the Statute of Frauds and of the recording of land rights apply to them.

The South Carolina Reporter's comment reads, in part, that "[i]f the severance is to be made by the buy, the contract is for the sale of land..."

Conclusion:

Timber deeds which convey standing timber to be severed by the buyer, no matter how the consideration is calculated, are subject to the state's documentary tax pursuant to Section 12-21-380. (May 11, 1988)

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard Jr.

S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson Jr.

A. Crawford Clarkson, Jr., Commissioner

Columbia, South Carolina
May 11, _____, 1988